



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
ECOSYSTEMS,
TRIBAL AND PUBLIC
AFFAIRS

May 11, 2015

Jeff Foss
Acting Idaho State Director
Bureau of Land Management
1387 South Vinnell Way
Boise, Idaho 83709

Dear Mr. Foss:

The U.S. Environmental Protection Agency has reviewed the Final Environmental Impact Statement for the Proposed Modification to the Plan of Operations for the Thompson Creek Mine, located in Custer and Bannock Counties, Idaho (EPA Project Number 95-141-BLM). Our review and comments are provided in accordance with our responsibilities under the National Environmental Policy Act, the Council of Environmental Quality's NEPA Implementation Regulations at 40 CFR 1500-1508, and our review authority under Section 309 of the Clean Air Act.

On June 11, 2014, EPA rated the draft EIS as "3- Inadequate." Our rating was based on the lack of critical financial assurance information, such as post-closure estimated costs, post-closure obligations, and the nature and adequacy of the funding mechanism. This last item is of particular concern because the proposed land exchange introduces uncertainties regarding a mechanism to ensure implementation of essential post-closure activities.

Our letter also voiced concern about potential major releases from the site that would adversely affect downstream resources. Because of this concern, EPA met with representatives of the Bureau of Land Management, the Idaho Department of Lands, and the Idaho Department of Environmental Conservation on May 30, 2012, and discussed EPA's authority under the Comprehensive Environmental Response, Compensation and Liability Act as a potential tool to use at the TCM site to ensure, at a minimum, the adequacy of financial assurance.

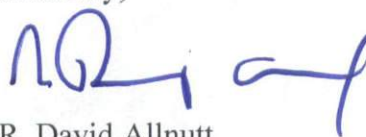
With regard to these issues, EPA finds the final EIS to be unresponsive to the comments we provided on the draft EIS. In particular, the discussion regarding post-closure financial assurance requirements remains general and the EIS continues to lack a quantitative discussion of the trust fund requirement. As a result, the final EIS does not adequately disclose information critical to determining the project's long-term environmental consequences. We continue to recommend that the BLM develop and disclose details regarding long-term bonding and reclamation of proposed activities as a supplement to the draft EIS, and circulate it for public comment. Additionally, the land exchange, if approved, contributes to the uncertainty of securing adequate funds, given that the state of Idaho's regulations do not explicitly provide the state with the ability to collect funds for long-term water treatment.

Throughout our discussions during the development of this EIS, it has been apparent that the BLM and the EPA agree that adequate financial assurance at mines is important to safeguard the environment and protect taxpayers. Our expectation, based on discussions with the BLM and language in the final EIS, was that BLM intended to obtain a financial guarantee for long-term water management to be held in a trust fund pursuant to 43 CFR 3809.522(c), prior to completing the NEPA process. Although this did not occur, we are pleased to note that in the final EIS, the BLM stated that the agency welcomes and would seek assistance from the EPA during the administrative review process of the updated reclamation cost estimate and long-term water treatment. We accept this invitation and look forward to the opportunity to review this information and provide technical feedback.

We would like to acknowledge the commitment and hard work of the BLM staff to resolve our issues related to the project. Overall, we believe the proposal includes environmental controls and mitigation measures that are significant improvements over the current reclamation plan. In particular, we acknowledge the addition of a comprehensive water management plan to address water treatment in perpetuity and the commitment from the BLM to approve the land exchange only after the state of Idaho has secured equal financial assurance amounts. We appreciate the BLM staff's time in working with us to resolve issues early and throughout the EIS development. Please refer to the attachment for our detailed comments.

We look forward to working with you to resolve outstanding issues. In the meantime, if you have questions about our comments, please call me at (206) 553-2581, or have your staff contact Lynne Hood, our lead NEPA reviewer for this project, at (208) 378-5757.

Sincerely,



R. David Allnutt
Director

Office of Ecosystems, Tribal and Public Affairs

Enclosure

cc: Ms. Katheryn Goessel
U.S. Forest Service, Salmon-Challis National Forest

Mr. Greg Martinez
U.S. Army Corps of Engineers, Walla Walla District

Mr. Gary Billman
Idaho Department of Lands

Mr. Troy Saffle
Idaho Department of Environmental Quality

EPA Detailed Comments Thompson Creek Phase 8 Final EIS

Financial Assurance

As you are aware, the EPA developed an independent estimate including calculated discount rate in April, 2013. Our estimate demonstrated a shortfall of between \$25M and \$78M depending on the discounted rate of return. These costs were based on the closure of the mine during the highest risk/highest cost period, which the BLM is required to fund. We also received a copy of Thompson Creek Metals Company's estimate. Based on our review of TCMC's estimate, we have the following comments:

Thompson Creek Metals Company's Financial Assurance Information

The information developed by TCMC includes costs for some key line items related to water treatment (feet of pipe, fluid management, labor, and water treatment plant replacement costs) upon completion and closure following Phase 8. It is not, however, an estimate of the present value of all future expected costs. We believe that some of these cost estimates are consistent with our independent estimate. However, a number of critical items are absent.

- **No schedule of costs for long-term versus reclamation.** The information provided is for costs associated with water management following completion of Phase 8. TCMC envisions long-term treatment beginning at year 16. We believe it is critical that the BLM develop a full cost estimate for water management activities for all phases of the mining life cycle (including the active reclamation phase) and consider an early closure scenario. While it may be appropriate to separate costs associated with post-closure water management and to include those funds in a trust mechanism, it is necessary to estimate and capture costs for water management for the active reclamation phase in another financial assurance mechanism (such as a surety bond). At this point, the information is insufficient to evaluate whether the known shortfall will be adequately addressed.
- **No net present value or discount rate calculation.** We understand that this calculation/negotiation will occur at a later date. The EPA requests review of this information.
- **No indirect or contingency costs.** Same as above.
- **Uncertainty with frequency of capital replacement costs.** There is no schedule for replacing water treatment infrastructure.
- **Basis of unit costs.** The basis for some the line item cost estimates is weak or missing, and thus cannot be thoroughly evaluated.

The EPA has not received a complete package about funding for long-term water management and treatment. Without this information we cannot determine whether water management and source control will be adequate to protect beneficial uses and habitat. Beneficial uses are established for waters within the Thompson Creek Mine area. The most stringent parameters and metals criteria are for the protection of cold water aquatic life and salmonid spawning. In addition, the Salmon River in the analysis area is designated as a domestic water supply. The final EIS states that active water treatment is required to meet applicable laws and regulations. Therefore, it is reasonable to conclude that water quality standards violations would occur without treatment.

Proposed Land Exchange

The land exchange raises significant concern and uncertainty about implementation of water management and treatment and other tasks during the post-closure period. This uncertainty arises from the fact that if the land exchange were executed, the BLM would no longer administer the project and associated financial assurance. To the EPA's knowledge, the state does not have the authority to require financial assurance for water treatment. Water treatment in perpetuity has been identified as an integral component of the proposed action. Thus, if the land exchange were to be executed, absent other agreements, there would be no mechanism in place to ensure implementation of post-closure water management and treatment tasks. We acknowledge that the final EIS asserts the BLM's commitment to condition the Record of Decision on the establishment of an irrevocable trust fund or similar mechanism, per 43 CFR 3809.552(c), for long-term requirements between the Thompson Creek Metals Company and the Idaho Department of Lands. However, the pertinent details regarding this arrangement are currently unknown; therefore, adequate financial assurance has not been guaranteed.

CERCLA Site Inspection

Previously, in a letter to the BLM, IDL and IDEQ on May 30, 2012, the EPA stated intent to use a CERCLA Site Inspection as part of the NEPA process for the following reasons:

- To ensure the adequacy of financial assurance;
- To identify potential data gaps;
- To identify the potential need for removal cleanup work in the interim;
- To consider the potential impacts of future release scenarios; and
- To serve as a basis for potential CERCLA enforcement actions if needed.

The EPA completed the site inspection for TCM in December, 2013, and provided a copy for your consideration. The site inspection was conducted using a large amount of pre-existing data characterizing TCM and its setting, collected by various mine operators and agencies over the past 30+ years to support a variety of objectives, including mine development, permitting and compliance activities, and three separate EISs. The TCM site inspection concluded that there is significant potential for major releases from the site that would have major downstream impacts. With these known risks to human health and the environment, the EPA may exercise our authority under CERCLA if adequate financial assurance is not secured. Please see our draft EIS letter dated June 11, 2014 for more detail.

Clean Water Act Section 404

EPA's Aquatic Resources Unit reviewed the Clean Water Act Section 404(b)(1) Analysis (contained in Appendix A) and Wetland and Stream Mitigation Plan (Appendix B) to evaluate compliance with the 404(b)(1) Guidelines, including the 2008 Final Mitigation Rule. The final EIS indicates an increase in stream and wetland impacts compared to those identified in the draft EIS; however, no changes were made to the Mitigation Plan, dated January, 2014. Furthermore, the 0.03-acre increase in wetland impacts and 742 linear feet of additional stream impacts are not explained in the August, 2014, 404(b)(1) Analysis and are not incorporated into the Mitigation Plan.

The EPA maintains the position that the final EIS does not adequately describe, in sufficient detail, the condition of aquatic resources onsite. The 404(b)(1) Analysis describes a slightly altered, but still functioning, system of wetlands and perennial streams that continue to have a hydrologic connection to downstream waters. The wetlands and streams are noted as providing habitat for song birds and small aquatic animals, cover for wildlife, browse for deer, shading for water temperature control, sediment

stabilization, as well as groundwater recharge/discharge. The U.S. Army Corps of Engineers, through its 404 permit process, provided the EPA with a much different representation of the site, describing extensive disturbance, dry channels, disconnected streams from downstream receiving waters, and low to non-functioning aquatic resources.

A detailed assessment of the site is critical in selecting the Least Environmentally Damaging Practicable Alternative, and in determining the appropriate amount of compensatory mitigation. The EPA considers the 404(b)(1) Analysis to be inadequate and misleading. Evaluating whether and how the proposed compensatory mitigation will offset impacts to aquatic resources at the project site remains problematic.

The EPA submitted comments in response to the Corps' public notice for the 404 permit, and based on subsequent conversations with the project manager we have a better understanding of site conditions at the mine. We have also communicated our concerns regarding compliance with our agencies' joint Final Mitigation Rule. Although we continue to have concerns regarding the proposed mitigation plan, we acknowledge that the Corps is moving forward with permit issuance.